

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for the 698–746, 747–762)	WT Docket No. 06-
150		
And 777–792 MHz Bands)	
)	
Implementing a Nationwide,)	PS Docket No. 06-
229		
Broadband, Interoperable Public)	
Safety Network in the 700 MHz)	
Band)	

REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its subsidiaries (collectively, “Leap”), hereby replies to the comments submitted in response to the Commission’s Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

INTRODUCTION

The opening round of comments reveals the complexity of the issues facing the Commission in reauctioning the D Block spectrum, and nearly everyone agrees that the rules need to be clarified in order for the Public/Private partnership to be successful. In light of the considerable work that remains before all of the issues

¹ Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06-150, Implementing a Nationwide Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, FCC 08-128 (May 14, 2008) (“*D Block NPRM*”).

are resolved, Leap urges the Commission to give this proceeding the care and attention it is due as the agency moves forward to create a new plan for the D Block.

In crafting the auction and service rules for the D Block, the Commission should not lose sight of the goal of fostering competition in the wireless marketplace. Verizon and AT&T advocate a “request for proposals” (“RFP”) process for selecting the D Block licensee, but that approach, as these carriers concede, is not legally viable without further Congressional action, and Leap believes that it is imprudent as a policy matter, as well. The Commission instead should proceed to reacquire the D Block as legally required. In order to maximize the likely benefits to consumers from the Public/Private partnership, the Commission should exclude the major winners of 700 MHz spectrum in Auction 73 from acquiring additional D Block spectrum. The Commission must also account for the commercial realities of the D Block licensee in order for this initiative to be successful. Finally, the Commission should acknowledge the significant role that satellite-based services can play in the public safety network, while continuing to promote discretion and flexibility for the D Block licensee.

I. THE COMMISSION SHOULD APPROACH THIS PROCESS WITH PRUDENCE AND CAUTION

The Commission has received many comments from a wide range of interested parties in this proceeding. The tremendous diversity of positions exhibited by the commenters underscores both the importance of this matter and the great distance that must be covered before the Commission reaches a resolution

to the many questions it posed in its *D Block NPRM*. Indeed, if there is only one point on which most parties agree, it is that more consideration is needed on these issues as the Commission moves forward.

As Leap and numerous other commenters have stated, the Commission must crystallize its requirements for the D Block licensee and fully set forth the licensee's rights and obligations in order to avoid a repeat of Auction 73.² If the Commission defers important questions for resolution until after the conclusion of the auction, then it will be impossible for carriers to assess the commercial value of the D Block. If that happens, there will be a substantial likelihood that the D Block reauction will again fail, since carriers and financing sources simply will not put hundreds of millions of dollars at risk in the face of massive uncertainty regarding the network that must be built out.

Thus, the Commission should ensure that the commercial and public safety sectors, working with the agency, are afforded sufficient opportunity to address these issues with the thoroughness and consideration they deserve. The Commission should build a specific proposal that should be re-circulated for public comment well in advance of the D Block reauction, and the Commission should not conduct the reauction until adequate certainty is achieved regarding all major

² See, e.g., Comments of AT&T Inc., 8 (June 20, 2008) ("AT&T Comments"); Comments of Google Inc., 5-7 (June 20, 2008); Comments of Leap Wireless International, Inc., 8 (June 20, 2008) ("Leap Comments"); Comments of NENA, 2 (June 20, 2008); Comments of the Public Safety Spectrum Trust Corporation, 27 (June 20, 2008) ("PSST Comments"); Comments of United States Cellular Corporation, 20 (June 20, 2008) ("US Cellular Comments"). Unless otherwise noted, the comments cited herein have been filed in WT Docket 06-150 and PS Docket 06-229.

aspects of the Public/Private partnership. As Commissioner Copps has observed, “the time for deferring uncertainty to a post-auction negotiation process is over. Now that we are not facing a hard-and-fast auction deadline, the right course is to work out the difficult questions in advance—thus providing much needed certainty and predictability to public safety, potential bidders, their investors, the public, the FCC and Congress.”³ Leap agrees wholeheartedly. If such considerations mean that the Commission must push the the D Block reauction to mid-2009 or later, it should do so.

II. AN RFP MODEL EXCEEDS THE COMMISSION’S AUTHORITY AND WOULD NOT SERVE THE INTERESTS OF CONSUMERS

Verizon and AT&T have urged the Commission to adopt a request for proposals (“RFP”) model to assign the D Block license.⁴ The Commission has no statutory authority to adopt such an approach, and in any case, an RFP approach does not adequately encompass the potential commercial benefits that the D Block can bring to consumers and the market for wireless services.

The Communications Act of 1934, as amended, requires that D Block license(s) be assigned by competitive bidding.⁵ The RFP approach advocated by Verizon and AT&T would directly contradict this statutory requirement—as AT&T

³ *D Block NPRM, Statement of Commissioner Michael J. Copps.*

⁴ AT&T Comments at 5; Comments of Verizon Wireless, 19 (June 20, 2008) (“Verizon Comments”).

⁵ 47 U.S.C. 337(a)(2) (requiring that 36 MHz of spectrum between 746 MHz and 806 MHz be assigned for commercial use by competitive bidding pursuant to 47 U.S.C. 309(j)).

concedes in its comments.⁶ Verizon also notes that under either of its proposed RFP-based approaches, “it would be necessary for Congress to take action.”⁷ Any effort to circumvent this statutory barrier without congressional authorization would likely invite a protracted legal battle that would only further delay the deployment of the Public/Private network. And if Congress were to become involved in this matter, it would be far more productive for Congress to authorize direct funding for a nationwide interoperable public safety network than merely to provide authority for the Commission to employ an RFP model.

Even aside from the legal obstacles that prohibit an RFP approach, AT&T and Verizon fail to appreciate that there is more at stake in this proceeding than creating a viable public safety network. Leap certainly appreciates that promoting the creation of an interoperable, nationwide public safety network is a critical priority for the Commission, but at the same time the Commission must not lose sight of the companion goal of promoting competition in the wireless industry on the commercial side of the Public/Private network. The D Block auction presents an extraordinary opportunity for the Commission to confer well-recognized benefits of competition and technological innovation on the consuming public. AT&T and Verizon would both have the process focus solely on public safety criteria while

⁶ AT&T Comments at 5 (stating that “the proposed RFP process will require legislative amendments to Section 337”).

⁷ Verizon Comments at 21, fn. 33.

ignoring other important objectives for the D Block.⁸ Both the text of the Communications Act and the policy balance inherent in the Public/Private partnership model counsel against such a narrow approach.⁹

III. THE COMMISSION SHOULD ENHANCE COMPETITION FOR WIRELESS SERVICES BY EXCLUDING PARTIES THAT ALREADY HAVE SIGNIFICANT ACCESS TO 700 MHz SPECTRUM

As Leap stated in its initial comments, it is important that the Commission take advantage of the opportunity that the D Block represents to enhance competition for wireless services by excluding those parties that already obtained nationwide or near nationwide 700 MHz spectrum holdings in Auction 73.¹⁰ A number of other commenters share Leap's concern. For instance, Council Tree Communications notes that unless the Commission takes steps to create new competition, its legacy may be "one in which a vibrantly competitive business disappeared as the largest carriers stockpiled spectrum resources and spectrum rights."¹¹ The Rural Cellular Association similarly suggests that not only would consumers benefit from a new nationwide (or regional) entrant, but small and

⁸ *See* AT&T Comments at 6 (suggesting that the Public Safety Block Licensee should have full control over the RFP process); Verizon Comments at 22 ("The sole consideration in selecting potential industry partners should be what works best for public safety").

⁹ *See, e.g.*, 47 U.S.C. § 230(b) (2) ("It is the policy of the United States – to preserve the vibrant and competitive free market" for Internet services); Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) ("An Act to promote competition ... in order to secure lower prices and higher quality services for American telecommunications consumers").

¹⁰ *See* Leap Comments at 3-7.

¹¹ Comments of Council Tree Communications, 4 (June 20, 2008).

regional carriers would gain another potential roaming partner.¹² And, as US Cellular points out, a competitive and innovative private sector for wireless services and technology will benefit public safety users, as well.¹³ The Commission should restrict eligibility in the D Block re-auction as these parties have suggested.

IV. EXPECTATIONS FOR THE PUBLIC/PRIVATE PARTNERSHIP MUST BE BUILT AROUND THE REALITIES OF COMMERCIAL COMPETITION

Wireless service providers commenting in this proceeding were near-unanimous in recommending that the Commission and the public safety community retool their expectations in order to make the Public/Private partnership a viable enterprise.¹⁴ The Commission cannot simply tinker around the edges of its previous D Block plan and expect to achieve a successful result the second time around. A wholesale reevaluation of the D Block requirements is needed in order to align the rules with the realities of competition in the wireless market.

Leap is encouraged that the Public Safety Spectrum Trust has lowered its expectation for the ten-year construction requirement from 99.3% population coverage to 98% and reduced the required allocation of priority access for public safety to 70% of overall network capacity.¹⁵ That is a good start, but building out a

¹² Comments of Rural Cellular Association, 4 (June 20, 2008).

¹³ US Cellular Comments at 12. US Cellular advocates the imposition of a spectrum screen on applicants to the D Block auction.

¹⁴ *See, e.g.*, AT&T Comments at 7; Comments of CTIA – The Wireless Association, 11 (June 20, 2008); Leap Comments at 9-12; Comments of Motorola, Inc., 7-11 (June 20, 2008); Verizon Comments at 8-9.

¹⁵ PSST Comments at 33-34. *See also* Comments of the International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation

commercially viable network will require further progress towards realistic and achievable baseline coverage and priority access requirements. The construction requirements for the Public/Private Partnership should mirror the requirements for the C Block (75% of the population by year ten), and public safety should have priority access to 50% of available network capacity as Leap has proposed.¹⁶

Other commenters still maintain that the D Block licensee should be required to provide a gold-plated network for public service, without any consideration whatsoever of commercial feasibility.¹⁷ These parties fail to appreciate the lessons of Auction 73. Any requirements placed on the D Block licensee must be commercially reasonable; otherwise, the public safety community will again find itself without a partner at the dance.

V. LEAP SUPPORTS VOLUNTARY INCLUSION OF A SATELLITE COMPONENT IN THE PUBLIC/PRIVATE NETWORK

As several commenters noted, satellite-based services can play an important role in both the public safety and commercial sides of the network.¹⁸ Satellites provide unrivaled coverage and are often insulated from catastrophic events on the

Communications Association, 12-13 (June 20, 2008); Comments of the Association of Public-Safety Communications Officials International, Inc., 25-30 (June 20, 2008).

¹⁶ See Leap Comments at 11.

¹⁷ See, e.g., Comments of the National Public Safety Telecommunications Council, 26-57 (June 20, 2008).

¹⁸ See Comments of Inmarsat, 3-5 (June 20, 2008) (“Inmarsat Comments”); Comments of the Mobile Satellite Ventures Subsidiary LLC, 6-11 (June 20, 2008) (“MSV Comments”); Comments of the Satellite Industry Association, 4-6 (June 20, 2008) (“SIA Comments”).

ground. Leap agrees with these parties that the D Block licensee should be allowed to use satellite services to meet Commission-mandated coverage requirements.¹⁹ Deployment of satellite-capable handsets is an economically efficient means to provide coverage for the public safety community in difficult-to-reach areas. However, given the complex demands of creating a nationwide interoperable public safety network, it is necessary to allow the D Block licensee flexibility in determining how best to design the network. Leap therefore agrees that the decisions of whether, how, and when to incorporate satellite-base services into the network should be left to the discretion of the D Block licensee.²⁰

CONCLUSION

The great diversity of input prompted by the *D Block NPRM* illustrates the daunting task that the Commission faces as it attempts to develop a workable framework for the Public/Private partnership. The Commission should proceed with care to sift through the submissions and weigh the merits of their many proposals. In doing so, the Commission should remain cognizant of the fact that the Public/Private partnership stands to benefit not only the public safety community, but consumers as well. The Commission should not overlook the opportunity to bring fresh competition and innovation to the wireless market. In order to accomplish both of these objectives, the Commission needs to design its rules to allow the D Block licensee to meet the challenges of the marketplace.

¹⁹ See, Inmarsat Comments at 6-8; MSV Comments at 15; SIA Comments at 7.

²⁰ See Inmarsat Comments at 6-8.

Respectfully submitted,

-/s/-

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